

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GERALD HESTER, )  
Plaintiff, )  
vs. )  
VISION AIRLINES, INC., )  
Defendants. )  
)  
)  
)  
)  
)  
Case No. 2:09-cv-00117-RLH-NJK  
ORDER DENYING MOTION FOR  
SANCTIONS WITHOUT PREJUDICE  
(Docket No. 358)  
)  
)

Pending before the Court is Plaintiffs' motion for sanctions pursuant to Fed. R. Civ. P. 37(b). Docket No. 358. That motion asserts that Defendant failed to timely provide any discovery that was ordered by the Court. *See id.* Defendant's response indicates that discovery was actually served by the deadline to do so. *See* Docket No. 360. In reply, Plaintiff asserts that, *inter alia*, the discovery responses were nonetheless inadequate. Docket No. 361. Because the arguments regarding the adequacy of the discovery responses are only developed in the reply, the Court does not have before it a proper record on which to rule on the motion. *Cf. Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996) (per curiam) (courts generally do not consider arguments raised for the first time in reply).<sup>1</sup> In

<sup>1</sup> The Court notes that the parties dispute whether a meet and confer was required prior to Plaintiffs' filing a Rule 37(b) motion for sanctions. A meet and confer was not required. See, e.g., *Allstate Ins. Co. v. Nassiri*, 2010 WL 5248111, \*3 (D. Nev. Dec. 16, 2011); *Sille v. Parball Corp.*, 2010 WL 2505625, \*2 (D. Nev. June 14, 2010). The Court otherwise expresses no opinion on the pending motion.

light of the circumstances, the Court finds the best course of action is to **DENY** without prejudice the motion for sanctions. Plaintiffs shall renew any motion for sanctions no later than February 4, 2014. Any opposition must be filed no later than February 7, 2014, and any reply shall be filed no later than February 10, 2014.<sup>2</sup>

**IT IS SO ORDERED.**

DATED: January 30, 2014

~~NANCY J. KORTE~~  
United States Magistrate Judge

<sup>2</sup> Although it should already be clear to counsel, the Court notes that the briefing deadlines set out herein control notwithstanding any contrary deadlines that may be automatically generated by CM/ECF. *See, e.g., Carrillo v. B&J Andrews Enter., LLC*, 2013 U.S. Dist. Lexis 22010, \*2 (D. Nev. Feb. 19, 2013). The failure to comply with the deadlines established herein may result in the striking of the late-filed document and/or sanctions.